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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

KATHRYN MAAS CRIPPEN as Trustee, etc., et al., Plaintiffs, Cross-Defendants and Appellants, v. LEE S. MONROE as Trustee, etc., et al., Defendants, Cross-Complainants and Respondents.	D050915 (Super. Ct. No. GIC848288)

APPEAL from a judgment of the Superior Court of San Diego County, Patricia A. Y. Cowett, Judge. Reversed with instructions.

Defendants, cross-complainants and respondents Lee S. Monroe and Barbara Monroe as Trustees of the Monroe Family Trust dated 10/4/99 (the Monroes) own a house in the Point Loma section of San Diego. Their property and the property of two neighbors is burdened by an easement allowing access to the houses of plaintiffs, cross-defendants and appellants Kathryn Maas Crippen as Trustee of the Kathryn Crippen Trust

dated 1/15/92, Frank V. Arrington and Linnea Arrington as Trustees Under Declaration of Trust dated 1/12/88, Donald A. Spanninga and Peggy J. Spanninga as Trustees of the Spanninga Family Trust dated 10/7/98, and Brian Arrington and Colby M. Arrington as Co-Trustees Under Declaration of Trust dated 9/19/2000 (together, Plaintiffs). As recorded on August 22, 1938, the grant of easement was 30-feet wide, 15 feet on the Monroes' property and 15 feet on their westerly neighbors' property. However, for much, if not all, of its history, the roadway over the easement was approximately 12-feet to 15-feet wide, and travel in both directions at the same time was not possible.

In 2005 the Monroes began a landscaping project that encroached on the 30-foot easement. Plaintiffs filed a complaint, seeking both an injunction requiring the removal of some of the encroachments and a declaration that they were entitled to a 20-foot-wide roadway that would allow travel to and from their homes at the same time. The Monroes filed a cross-complaint for declaratory relief.

The trial court found that the original deed creating the 30-foot easement was unambiguous. The trial court also found, however, that the deeds by which Plaintiffs obtained ownership of their property did not use the exact language used in the original grant of easement. The trial court found the subsequent deeds ambiguous. Using extrinsic evidence, the trial court established the intent of the grantor and grantees by "the actual historical use made of the driveway," and ruled their intent was "to only use that portion of the Easement necessary for ingress and egress by a single vehicle." Plaintiffs appeal.

BACKGROUND

A. *Subdivision*

In February 1938 a map was filed by the Union Trust Company, acting as trustee of the property owner, with the San Diego County Recorder for the Yacht Club Terrace subdivision. The subdivision created 28 lots and dedicated a public street, San Antonio Place. Eight of the lots, including the Monroes', are bordered on the west by San Antonio Place and on the east by San Diego Bay. Ten of the lots run along the westerly side of San Antonio Place. The remaining lots face Rosecrans Street. San Antonio Place is a cul-de-sac ending and enclosed by the lots now owned by the Monroes and their neighbors.

B. *Grant of Easement*

Immediately south of Yacht Club Terrace was a portion of Pueblo Lands Lot 177 divided into three approximately 100-foot-wide lots each bordered on the east by San Diego Bay and on the west by Rosecrans Street.[1] In August 1938 the Union Trust Company filed with the San Diego County Recorder a grant of easement which gave the owners of those unsubdivided portions of Lot 177 south of Yacht Club Terrace "an easement and right of way for ingress and egress to [their property] said easement and right of way being 30 feet in width [from their property to San Antonio Place] and lying

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1 As a result of its Spanish and Mexican origins, the City of San Diego owned approximately 48,000 acres of land surrounding the original pueblo and included what would become Yacht Club Terrace and the lands bordering it. (See Crane, The Pueblo Lands: San Diego's Hispanic Heritage, The Journal of San Diego History, Volume 37, Number 2, 1991, p. 105.)

15 feet on each side of the described center line, to wit[.]" The grant of easement then precisely defined the boundary between the lot now owned by the Monroes and their westerly neighbors.[2]

C. *Use of the Easement*

At the time the easement was granted, only one house existed on the unsubdivided land south of Yacht Club Terrace. It was serviced by a narrow gravel driveway substantially less than 30-feet across running within the express easement from San Antonio Place to the lots south of Yacht Club Terrace.

The owners of the three lots south of Yacht Club Terrace subsequently created an internal paved 20-foot-wide easement running through the two northerly lots with its centerline coinciding with the centerline of the easement running south from San Antonio Place. The internal easement effectively created five residential lots: two, bordered on the east by San Diego Bay and on the west by the internal easement; one, bordered on the east by the bay and on the west by Rosecrans Street; and two, bordered on the east by the internal easement and on the west by Rosecrans Street.

After the Second World War, five homes were built on the lots south of Yacht Club Terrace. The easement from San Antonio Place provides the only access to four of those homes. At some point, the roadway over the easement was paved. The roadway was never more than 12-feet to 15-feet wide and could not accommodate two-way traffic.

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[2] The owners of the two lots to the west of the Monroes burdened by the easement are not parties to this action.

On the westerly side of the easement, i.e., the side opposite the Monroes' property, there is a five- to six-feet high concrete wall running the length of the easement that had been in place for many years. At its north end, the wall follows the west limit of the easement. However, it gradually encroaches on the easement. At the point where the subject easement meets the internal easement, the wall encroaches five feet. Next to the retaining wall and encroaching approximately five feet on the easement is a planted area containing trees and plants, including a ficus tree with a trunk diameter of two and one-half feet. The plant area runs for most of the length of the easement and is bordered on its eastern edge by an old asphalt curb.

On the easterly side of the easement, i.e., the Monroes' side, is a long-existing rock retaining wall that generally follows the eastern edge of the easement. The wall stops near the south end of the Monroes' property at an outbuilding used by the Monroes as an office. The wall for a short distance encroaches one to two feet onto the easement. A small portion of the office building also encroaches onto the easement. Immediately to the west of the retaining wall was a wooden fence that encroached another one to two feet onto the easement. To the west of the fence were trees overgrown with ivy that also encroached still further onto the easement.

The land in the area of the easement slopes from the west to the east toward San Diego Bay. The land on which the Monroes' house and office rests is several feet below the level of the roadway over the easement. The fence and vegetation provided privacy for the Monroes' home.

Historically, the roadway over the easement giving access to Plaintiffs' property was generally defined on the west by the old asphalt curb and on the east by the vegetation growing to the west of the fence on the Monroes' property.

D. *The Monroes' New Landscaping*

In early 2005 the Monroes decided to make landscaping changes to their property in the area of the easement. Their contractor removed the encroaching vegetation that had defined the eastern edge of the roadway and the wooden fence behind it. At that time Plaintiffs indicated to the Monroes their desire that the roadway have sufficient width to allow two vehicles to pass in opposite directions at the same time. Discussions were had between the parties but no resolution was reached.

The Monroes' new landscaping, now essentially completed, includes a concrete base that runs generally parallel to the existing rock wall and encroaches several feet onto the easement. The concrete base is topped by a fence constructed of metal slates. West of this new fence and encroaching several more feet onto the easement is a dirt area that is planted with mature vegetation. Bordering this vegetation is a concrete curb that, with the existing asphalt curb on the west side of the easement, defines the roadway to Plaintiffs' property. The roadway as it now exists is approximately the same width as it was before the Monroes' new landscaping.

E. *Litigation*

Plaintiffs sought declaratory and injunctive relief. They alleged the Monroes' recent landscaping encroached on the 30-foot-wide express easement and unreasonably interfered with access to their property. Plaintiffs sought a declaration that they were

entitled to utilize the entire easement and that the Monroes be required to remove all encroachments.

The Monroes answered and filed a cross-complaint for declaratory relief. They sought a declaration that the Monroes could use any part of the easement burdening their property that did not unreasonably interfere with Plaintiffs' use of the easement; that Plaintiffs were estopped from complaining about the Monroes' improvements to areas covered by the easement because they had tolerated other long-standing encroachments on the easement; and that the width of the reasonable access to Plaintiffs' property was established by their historical use of the easement.

By the time of trial, Plaintiffs did not seek the removal of all of the Monroes' recent landscaping but only those improvements west of the Monroes' new concrete and metal fence, i.e., approximately 10 feet to the east of the centerline of the express easement. They stated that with additional clearing on the property forming the westerly side of the easement, a 20-foot travelway would be created allowing the passage of vehicles in opposite directions at the same time.

The Monroes sought a declaration from the court that the easement on their side of its centerline ended at their newly installed curb. At the San Antonio Place end of the easement, the distance from the centerline of the easement was less than five feet from the Monroes' curb. At the opposite end of the easement, the centerline of the easement was approximately eight feet from the Monroes' curb. If the historical westerly boarder of the roadway was left in place, the approximate width of the roadway would be what it was it was before the Monroes' landscaping project. The Monroes suggested if Plaintiffs

wanted a 20-foot-wide roadway, they could expand it to the west of the centerline of the easement.

F. *Trial Court Decision*

The trial court found the 1938 grant of easement to be unambiguous. The court noted, however, that later deeds by which Plaintiffs obtained ownership of their parcels did not describe the easement using the same language as the 1938 grant. Specifically, the court noted that while the 1938 grant of easement described a 30-foot-wide easement extending 15 feet on each side of the centerline, Plaintiffs' deeds did not expressly state that the 30-foot easement was 15 feet on each side of the centerline. Based on this discrepancy, the trial court found the descriptions of the *original* grant of easement in subsequently recorded documents ambiguous and, therefore, entertained extrinsic evidence to determine the size and location of the *original* grant of easement.

The trial court noted evidence that prior to the Second World War, the only access to what is now the property occupied by Plaintiffs was a gravel driveway. The court found that at some point after the war, the driveway was paved but its same width was maintained. The court noted two of the original grantees of the easement lived on the property now occupied by Plaintiffs until the 1980's and that for over 60 years the roadway would accommodate only one vehicle and was approximately 12-feet to 15-feet wide.

The trial court found it was the intention of the grantor and grantee to use only that portion of the easement necessary for ingress and egress by a single vehicle at time. The court found this intent "was established by the actual historical use made of the driveway

from the late 1930's until the Plaintiffs/Cross-Defendants acquired the Dominant Tenements over fifty years later." The court additionally found it was the intent of the grantor and grantee that the width of the roadway would be six feet on either side of the property line between what is now the Monroes' property and the property burdened by the easement west of the Monroes' property, except at the northeastern "edge" bounded by the concrete curb installed by the Monroes in 2005. The trial court found that curb was an integral part of the drainage system for the easement and did not interfere with the easement rights of Plaintiffs.

The court also construed the easement to require that, if Plaintiffs wanted to widen the access road to 20 feet, the width would be measured from the retaining wall on the westerly edge of the easement, but in no case would Plaintiffs be allowed to move the concrete curb installed by the Monroes. If, however, Plaintiffs wished to move that curb to allow the roadway to be expanded to a full six feet to the south of the property line between the burdened property, it would be at Plaintiffs' sole expense.

The trial court ruled that, if the Monroes kept the concrete curb in its present condition, they were required to hold harmless and indemnify the invitees of Plaintiffs' property if there was damage to a vehicle or injury to a person engaged in emergency access to Plaintiffs' property. This hold harmless and indemnification obligation did not

extend to Plaintiffs or their family members, however.[3] If, however, Plaintiffs rounded the edges of the concrete curb, no such duty of indemnity would be imposed.

DISCUSSION

Plaintiffs argue the trial court erred in finding that, while the 1938 grant of easement was itself unambiguous, an ambiguity arose when years later deeds conveying Plaintiffs' property did not describe the easement with the same language as the 1938 grant. They also argue that, even if the original grant of easement was ambiguous, the trial court erred in the manner it interpreted the intent of the original grantor and grantee. They argue this court should independently interpret the easement and conclude they are entitled a roadway that provides safe and convenient access to their homes that is 20 feet wide, 10 feet on each side of the easement centerline.

A. *Law*

1. *Express Easements*

An easement conveys rights in or over the land of another. (*Camp Meeker Water System, Inc. v. Public Utilities Com.* (1990) 51 Cal.3d 845, 865 (*Camp Meeker Water*).) The existence of an easement creates two tenements: the dominant tenement is held by the one who holds the right to go over another's land (e.g., here, the Plaintiffs); the servient tenement is held by the one whose land is traversed (e.g., the Monroes). (See Civ.Code, § 803; *Camp Meeker Water, supra,* 51 Cal.3d at p. 865.)

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3 The court's ruling does not explain why an indemnity obligation was imposed on the Monroes with respect to emergency response personnel and their vehicles, but not with respect to Plaintiffs and their family members and property.

An easement may be created by express grant. (*Wolford v. Thomas* (1987) 190 Cal.App.3d 347, 354; 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 382, p. 446; 6 Miller & Starr, Cal. Real Estate (3d ed.) Easements, §§ 15:1, 15:13.) When an easement arises from an express grant, the use of the easement is determined by the terms of the instrument creating it. (Civ. Code, § 806; see also *Norris v. State of California ex rel. Dept. Pub. Wks.* (1968) 261 Cal.App.2d 41, 45 (*Norris*).)

2. *The Size and Location of a Roadway Within an Easement*

An express easement is interpreted in the same manner as a contract. (Civ. Code, § 1066.) The primary objective is to ascertain and carry out the parties' intent. (See *City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 238.) " 'The intention of the parties to a grant is to be gathered, if possible, from the instrument itself and is determined by a proper construction of the language used, rather than by resorting to extrinsic evidence.' [Citation.]" (*Norris*, *supra*, 261 Cal.App.2d at p. 46; see also *Pulliam v. Bennett* (1880) 55 Cal. 368, 371; Civ. Code, § 806 [the parameters or extent of a servitude "is determined by the terms of the grant"].) "The primary object of the interpretation of a deed is to ascertain and give effect to the intention of the parties, especially that of the grantor, *as it existed at the time of the execution of the instrument*." (*Palos Verdes Corp. v. Housing Authority* (1962) 202 Cal.App.2d 827, 835, italics added.) "If the language of a deed is plain, certain and unambiguous, neither parol evidence nor surrounding facts and circumstances will be considered to add to, detract from or vary its terms . . . ." (*Id.* at p. 836.)

Although an instrument appears clear and unambiguous on its face, a court may receive (but not admit) extrinsic evidence concerning the parties' intentions to determine ambiguity−whether the language of the instrument is "reasonably susceptible" to the interpretation urged by a party. (*Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 37.) " 'If the court decides, after considering this evidence, that the language of a contract, in the light of all the circumstances, 'is fairly susceptible of either one of the two interpretations contended for . . .' [citations], extrinsic evidence relevant to prove either of such meanings is admissible." (*Id*. at p. 40, fn. omitted.) "The test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and ambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible." (*Ibid.*; see also *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2003) 107 Cal.App.4th 516, 524 [" ' "When a dispute arises over the meaning of contract language, the first question to be decided is whether the language is 'reasonably susceptible' to the interpretation urged by the party [and if not], the case is over" ' "].)

The specification of width and location of a right-of-way on the face of an instrument does not necessarily mean the instrument is unambiguous. (*Scruby v. Vintage Grapevine, Inc.* (1995) 37 Cal.App.4th 697, 704 (*Scruby*); *Pasadena v. California-Michigan etc. Co.* (1941) 17 Cal.2d 576, 581; *Gaut v. Farmer* (1963) 215 Cal.App.2d 278, 282.) In *Scruby*, for example, the easement grant deed provided the grantee a " 'nonexclusive easement, 52 feet in width, for road and utility purposes' " that bounded a

road ending in a cul-de-sac. (*Scruby*, *supra*, 37 Cal.App.4th at p. 701.) The precise boundaries of the easement were set out in a deed by reference to a survey map. The grantee, a husband and wife, argued they were entitled to use every portion of their 52-foot-wide easement for "road and utility purposes." (*Id.* at p. 703.)

The *Scruby* court disagreed, relying on the principle that the " 'specification of width and location of surface rights-of-way does not always determine the extent of the burden imposed on the servient land. . . .' [Citation.]" (*Scruby*, *supra*, 37 Cal.App.4th at p. 704.) The court instead agreed with the trial court that the scope of the easement grant was ambiguous on its face "concerning the matter of the physical area over which [the grantee] has roadway use," inasmuch as the grant of easement "does not specifically describe the intended roadway as 52 feet in width ending in a 100-foot cul-de-sac," but instead provides " 'a nonexclusive easement, 52 feet in width, for road and utility purposes.' " (*Id.* at p. 705.) The *Scruby* court noted this kind of ambiguity frequently occurs in right-of-way easements and requires the admission of extrinsic evidence to determine intent. (*Ibid.*; see also *Andersen v. Edwards* (Alaska 1981) 625 P.2d 282, 284-287; *Fairfield v. Pepe* (1977) 392 N.Y.S.2d 481, 482; *Diefender v. Forest Park Springs* (Fla. App. 1992) 599 So.2d 1309, 1312; *Albans v. R.K. Co.* (Ohio 1968) 239 N.E.2d 22, 24; Annot., Width of Right of Way−Width (1953) 28 A.L.R.2d 253, 265-267; 28A C.J.S. (2008) Easements, § 200, pp. 410-411.)

3. *Standard of Review*

The trial court's determination of whether an ambiguity exists in a contract is a question of law, subject to independent review on appeal. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 847.) The interpretation of a written document is also a question of law. (*ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1266). In the absence of conflicting extrinsic evidence, a reviewing court applies a de novo review standard. (*Ibid.*; see also *Appleton v. Waessil* (1994) 27 Cal.App.4th 551, 556 ["where . . . the extrinsic evidence is not in conflict, construction of the agreement is a question of law for our independent review"].)

B. Analysis

1. Ambiguity Exists in the 1938 Grant of Easement

Relying on *Scruby*, we conclude the trial court erred in finding that the 1938 grant of easement was unambiguous. The legal description of the grant of easement provides in part for "[a]n easement for ingress and egress, 30 feet in width, over lots 8, 27 and 28 of the Yacht Club Terrace . . . ." On its face, the grant of easement does not make clear whether the stated width of the easement describes an actual passageway 30 feet in width for the length of the easement, or merely describes an area 30 feet in width over which the grantee has a right-of-way of less than 30 feet, as reasonably necessary for safe, reasonable and convenient passage. (See *Scruby*, *supra*, 37 Cal.App.4th at p. 703.)

We further conclude, however, the trial court's error was harmless. Although the trial court determined the 1938 easement deed was unambiguous regarding the size and location of the easement, it ruled subsequent deeds, by which Plaintiffs obtained

ownership of their parcels, rendered the grant of easement ambiguous because the subsequent deeds did not use the exact language of the original grant of easement in describing the subject easement.[4] In particular, while the original grant of easement described a 30-foot-wide easement with a centerline and expressly stated that the easement extended 15 feet on each side of the centerline, the subsequent deeds did not expressly state that the 30-foot easement was 15 feet on each side of the described centerline. The trial court thus admitted extrinsic evidence, including evidence of the original intent of the grantor and grantee of the 1938 easement deed.

We agree with Plaintiffs that the core evidence on which the issue of the intent of the original grantor and grantee turns is not in such conflict that we must defer to the interpretation given the grant of easement by the trial court.[5] As pointed out by the trial court, such evidence concerns the intent of the original grantor and grantees and includes: the 1938 subdivision map, the Pueblo Lot 177 Assessor's Map, the August 22, 1938,

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4 It is not clear from the record why the trial court found the 1938 easement deed "unambiguous," but nonetheless admitted parol evidence based on an ambiguity in Plaintiffs' subsequent vesting documents to interpret the "unambiguous" 1938 easement deed.

5 We disagree with the Monroes that a substantial evidence standard of review should apply because of a "conflict" in the evidence regarding Plaintiffs' and their invitees' occasional practice of driving off the payment onto the ivy. However, such evidence is not competent parol evidence to interpret the intent of the grantor and grantees in 1938, at the time of conveyance. (See *Palos Verdes Corp. v. Housing Authority*, *supra*, 202 Cal.App.2d at p. 835.) Even if such evidence was competent on the issue of original intent, we conclude there is no real conflict with regard to such testimony, nor was this testimony material to the trial court's construction of the easement. For these same reasons, we also reject the claim there was a purported conflict in the evidence arising from the expert testimony regarding whether the easement is a driveway, as the Monroes claim, or a street, road or alley, as Plaintiffs allege.

grant of easement, the 1940's through 1950's photographs, and the testimony of retired San Diego County Superior Court Judge Mack P. Lovett and two original grantees of the easement.

2. *Extrinsic Evidence is Admissible Due to Ambiguity*

Because the 1938 grant of easement is ambiguous, we turn to extrinsic evidence. Parol evidence can be considered to determine what the original contracting parties meant by the words they used. (*Scruby*, *supra*, 37 Cal.App.4th at p. 702; see also Civ. Code, § 1647.) However, when, as here, there is no evidence of the parties' discussions at the time the easement deed was entered into, a court may look to the surrounding circumstances, including the nature and purpose of the easement, " 'so that the court can "place itself in the same situation in which the parties found themselves at the time of contracting." [Citations.]' " (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1168; see also *Buehler v. Oregon-Washington Plywood Corp*. (1976) 17 Cal.3d 520, 526; *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 522; *Scruby*, *supra*, 37 Cal.App.4th at p. 702; 6 Miller & Starr, Cal. Real Estate (3d ed.) Easements, § 15:16.) Consideration is given "not only to the actual uses being made at the time of [grant], but also to such uses as the facts and circumstances show were within the reasonable contemplation of the parties at the time of the conveyance." (*Camp Meeker Water*, *supra,* 51 Cal.3d at p. 867.) " ' "It is to be assumed that [the contracting parties] anticipated such uses as might reasonably be required by a normal development of the dominant tenement . . . ." ' " (*Ibid.*)

In addition to the foregoing rules, the terms of an express easement are subject to certain special rules of contract interpretation, including the requirement that the

language of the easement be liberally construed in favor of the grantee. (Civ. Code, § 1069; *Norris*, *supra*, 261 Cal.App.2d at pp. 46-47.)

Central to the interpretation of an ambiguous grant of a right-of-way is that the right-of-way is as wide, but no wider than, as is necessary to allow a safe, reasonable and convenient passage over it. (See *Scruby*, *supra*, 37 Cal.App.4th at p. 703; *Cummins v. Levy* (1953) 116 Cal.App.2d 610, 613; 6 Miller & Starr, Cal. Real Estate (3d ed.) Easements, § 15:59.) Every incident of ownership that is not inconsistent with the enjoyment of the easement is reserved to the owner of the servient tenement. (*Silacci v. Abramson* (1996) 45 Cal.App.4th 558, 562; *Scruby*, *supra*, 37 Cal.App.4th at p. 702.) Consequently, the owner of the servient tenement may make any use of the land that does not " 'interfere unreasonably with the easement.' " (*Camp Meeker Water, supra,* 51 Cal.3d at p. 867; see also *Herzog v. Grosso* (1953) 41 Cal.2d 219, 224; *Pasadena v. California-Michigan etc. Co.*, *supra*, 17 Cal.2d at p. 579; 6 Miller & Starr, Cal. Real Estate (3d ed.) Easements, §§ 15:63, 15:64.)

3. *Competent Extrinsic Evidence Was Received*

Competent parol evidence was received relating to the creation of the Yacht Club Terrace 28-lot residential subdivision shortly before the developer executed the grant of easement in August 1938. The development of the Yacht Club Terrace subdivision is what created the need for the easement in the first place. At the time of the easement grant, the southerly 300 feet of Pueblo Lot 177 was divided into three 100-foot-wide parcels. The parcels were between 18,000 and 24,000 feet and each had 100 feet of frontage on San Diego Bay. There was one home at the south end of the Pueblo Lot

serviced by a gravel roadway located within the express easement that connected to San Antonio Place, a public street dedicated as part of the Yacht Club Terrance subdivision map. As is true today, the roadway was approximately 12- to 15-feet wide, accommodating one car at a time.

Here, the anticipated "normal development" of the dominant tenements strongly supports an interpretation of the easement deed to allow improvement of and use of a roadway of sufficient width that two vehicles approaching one another could safely pass. The "commercial realities" (*Hays v. Vanek* (1989) 217 Cal.App.3d 271, 282) in 1938 were the developer had just completed the mapping of a 28-lot subdivision adjacent to San Diego Bay, and although at the time only one house was located on the dominant tenements, it is reasonable to infer the grantor and grantees contemplated future development of the dominant tenements, which in fact has occurred over the years.

In light of such circumstances, we conclude that the trial court's construction of the grant of easement to provide for only a single-lane road for ingress and egress is contrary to the original intent of the grantor and grantees. We further conclude that if the parties had intended the roadway within the easement to be a single-lane road approximately 12- to 15-feet wide, they would not have created an easement 30 feet wide, leaving at least half of the width of the easement unused (e.g., 15 to 18 feet).

Moreover, because the roadway has never been wider than approximately 12 to 15 feet, if the parties had intended a roadway of similar width for ingress and egress to the dominant tenements, they likely would have described the roadway in the 1938 grant of easement as similar in size to the then-existing roadway, or as a roadway 15 feet wide, or

as a single-lane road. A developer in 1938 had every incentive (as does a developer today) to burden the servient tenements only to the extent necessary to ensure the dominant tenements had a safe, reasonable and convenient passageway. (See *Scruby*, *supra*, 37 Cal.App.4th at p. 703.) In 1938, the minimum statutory width requirement for a private road was 20 feet, the same statutory minimum width for a private road today. (See *Mulch v. Nagle* (1921) 51 Cal.App. 559, 568 [citing former Pol. Code § 2620].)

By granting an easement 30-feet wide for a roadway, the grantor and grantees recognized that someday the parcels within the dominant tenement would be developed, and the roadway serving those parcels would be improved and widened to meet the needs of that anticipated future development. We thus conclude the original intent of the grantor and grantees was to create a roadway 20-feet wide within the easement, to allow the passage of vehicles traveling in opposite directions at the same time.

We further conclude from the language in the grant of easement that the original intent of the grantor and grantees was for the improvement and use of a roadway 20-feet wide located equally on each side of the easement centerline. Indeed, the language of the grant states the easement and right-of-way were to lie 15 feet on each side of the described centerline. This language shows an intent by the parties to the conveyance to impose the burden of the easement and right-of-way equally on the servient tenements. That is, if the grantor had intended to disproportionally burden either the westerly (Lots 27 and 28) or the easterly (the Monroes' side) servient tenements with a roadway, the developer would not have expressly stated the easement centerline in the grant of easement.

We further note the description of the easement centerline in the grant of easement is comparable to the description of the centerline of San Antonio Place on the Yacht Club Terrace subdivision map. San Antonio Place, as improved by the developer, is located equally on each side of its designated centerline. There is no reason to conclude the grantor did not intend the same result in connection with the grant of easement. We thus conclude the roadway within the easement should be located on the centerline in accordance with the equal burden language of the grant of easement.[6]

DISPOSITION

The judgment is reversed. For the reasons stated in this opinion, we conclude the intent of the original grantor and grantees was for the improvement and use within the 30-foot-wide easement of a 20-foot-wide roadway, located equally on each side of the easement centerline. We therefore do not decide any other issue or issues between the

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[6] Although a portion of the Monroes' new fence footing encroaches about six inches into the westerly 10 feet of the Monroes' property sought for use as a roadway, Plaintiffs state they do not seek to relocate any portion of the Monroes' fence. Instead, they admit a minor adjustment to the road can be made in order not to disturb the Monroes' new fence.

parties in connection with the 30-foot-wide easement and remand the case for further proceedings consistent with this opinion.

Plaintiffs are entitled to their costs on appeal.

BENKE, Acting P. J.

WE CONCUR:

HALLER, J.

McINTYRE, J.